

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 8 March 1994.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Rt. Hon. Jonathan Hunt

COUNTRYWIDE BANKING CORPORATION LIMITED

[PRIVATE]

ANALYSIS

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A BILL INTITULED

An Act to provide for—

- 5 **(a) The transfer to Countrywide Banking Corporation Limited of the undertaking of United Bank Limited; and**
 (b) The dissolution of United Bank Limited; and
 (c) Related matters

WHEREAS—

- 10 A. Countrywide Banking Corporation Limited is a duly incorporated company under the Companies Act 1955

No. 252—2

Price Code: J

and a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989:

- B. United Bank Limited is a duly incorporated company under the Companies Act 1955 and a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989: 5
- C. United Bank Limited is a wholly owned subsidiary of Countrywide Banking Corporation Limited:
- D. It is expedient in the interests of banking efficiency that the banking business conducted by United Bank Limited should be amalgamated with the banking business of Countrywide Banking Corporation Limited and United Bank Limited be dissolved: 10
- E. Legislation is the only means by which the amalgamation of the banking businesses of both the banks can be effected efficiently and economically and without interference with the conduct and continuity of the business of banking in the interests of the banks, their customers, and other persons having business with them: 15
- F. The objects of this Act cannot be attained without the authority of Parliament: 20

BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Countrywide Banking Corporation Limited Act 1993. 25

(2) Except as provided in **subsection (3)** of this section, this Act shall come into force on the date on which it receives the Royal assent.

(3) **Sections 4 to 12** of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council (*and one or more Orders in Council may be made bringing different provisions into force on different dates*). 30

(4) The date appointed by the Governor-General under **subsection (3)** of this section shall be a date that is not earlier than 1 month nor later than 3 months after the date on which the order is made. 35

2. Interpretation—In this Act, unless the context otherwise requires,—

“Appointed day” means the date appointed for the commencement of **sections 4 to 12** of this Act: 40

“Countrywide” means Countrywide Banking Corporation Limited, a duly incorporated company having its registered office at Auckland:

5 “Depositor”, in relation to United, includes a terminating depositor:

“Inland Revenue Acts” means the Acts specified in the First Schedule to the Inland Revenue Department Act 1974:

“Instrument” includes—

10 (a) Any instrument (other than this Act) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy of it were lodged, filed, or registered under any enactment; and

15 (b) Any judgment, order, or process of a court:

“Instrument by way of security” has the meaning assigned to it in section 2 of the Chattels Transfer Act 1924:

“Land” has the meaning assigned to it in section 2 of the Land Transfer Act 1952:

20 “Liabilities” means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere):

25 “Property” means property of every kind, whether tangible or intangible, real, or personal, corporeal or incorporeal and, without limiting the generality of the foregoing, includes—

30 (a) Choses in action and money:

(b) Goodwill:

(c) Rights, interests, and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent, or prospective:

35 “Rights” means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective:

40 “Security” means a mortgage, submortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, defeasance, hypothecation, instrument by way of security, lien, pledge, or other security for the payment of money or for the discharge of any other obligation or liability, and in any case whether upon

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demand or otherwise, whether present or future and whether actual or contingent; and includes an agreement or undertaking to give or execute, whether upon demand or otherwise, any of the foregoing:

“Subsidiary” has the same meaning as in the Companies Act 1955:

“Terminating depositor” means the holder of a terminating deposit in United, being a deposit that arises from the conversion of a terminating share in what was formerly United Building Society consequent upon the conversion of that society into a company pursuant to Part VIIA of the Building Societies Act 1965:

“Undertaking”, in relation to United, means the property, rights, and liabilities of United:

“United” means United Bank Limited, a duly incorporated company having its registered office at Auckland.

3. Act to bind the Crown and other persons—This Act binds the Crown and every person whose rights are affected by any provision of this Act.

4. Vesting of undertaking of United Bank Limited—(1) On the appointed day the undertaking of United shall, by virtue of this Act, vest in Countrywide.

(2) On the appointed day—

(a) United shall be deemed to be dissolved; and

(b) Every person holding office as a director, secretary, or auditor of United shall cease to hold that office.

5. Consequential provisions on vesting of undertaking of United Bank Limited—(1) Without limiting the generality of section 4 of this Act, the following provisions shall apply on and after the appointed day:

(a) A reference (express or implied) to United in any instrument made, given, passed or executed before the appointed day shall, unless the context otherwise requires, be read and construed as a reference to Countrywide:

(b) A reference (express or implied) to the holder for the time being of a particular office within United in any instrument made, given, passed, or executed before the appointed day shall be read and construed as a reference to the person for the time being holding

office as Managing Director of Countrywide or as General Manager Banking Countrywide or such other officer of Countrywide as is designated from time to time by the Managing Director of Countrywide or by any other officer acting under delegation from the Managing Director:

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(c) The relationship between United and a customer or depositor shall become the same relationship between Countrywide and that customer or depositor and the same rights and liabilities, including rights of set-off, shall exist between Countrywide and a customer or depositor as existed immediately before the appointed day between United and that customer or depositor:

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(d) All contracts, agreements, conveyances, deeds, leases, licences, securities, and other instruments, undertakings, and notices (whether or not in writing) entered into by, made with, given to or by, or addressed to United (whether alone or with any other person) before the appointed day and subsisting immediately before the appointed day shall, to the extent that they were previously binding on and enforceable by, against, or in favour of United, be binding on and enforceable by, against, or in favour of Countrywide as fully and effectually in every respect as if, instead of United, Countrywide had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed, as the case may be:

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(e) An instruction, order, direction, mandate, or authority given to United and subsisting immediately before the appointed day shall be deemed to have been given to Countrywide:

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(f) A security held by United as security for a debt or other liability to United incurred before the appointed day shall be available to Countrywide as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts or liabilities to Countrywide incurred on or after the appointed day; and, in relation to a security, Countrywide shall be entitled to all the rights and priorities, however they arise, and shall be subject to all liabilities to which United would

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- have been entitled or subject if this Act had not been passed:
- (g) All the rights and liabilities of United as bailor or bailee of documents or chattels shall be vested in and assumed by Countrywide: 5
- (h) A negotiable instrument or order for payment of money which, before or on the appointed day, is drawn on or given to or accepted or endorsed by United or payable at a place of business of United shall, unless the context otherwise requires, have the same effect on and after the appointed day as if it had been drawn on or given to or accepted or endorsed by Countrywide instead of United or was payable at the place of business of Countrywide: 10
- (i) A reference (express or implied) to United in any notice or other communication served, given, or sent on or after the appointed day in relation to any instrument or other document subsisting immediately before the appointed day shall, unless the context otherwise requires, be read as a reference to Countrywide. 15 20
- (2) Nothing effected or authorised by this Act—
- (a) Shall be regarded as placing United or Countrywide or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or 25
- (b) Shall be regarded as placing United or Countrywide or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or 30
- (c) Shall release any surety wholly or in part from all or any of the surety's obligations; or
- (d) Shall be regarded as giving rise to a right for any person to—
- (i) Terminate or cancel or modify any contract or agreement; or 35
- (ii) Enforce or accelerate the performance of an obligation; or
- (iii) Require the performance of an obligation not otherwise arising for performance; or 40
- (e) Shall invalidate or discharge any contract or security; or
- (f) Shall affect the rights of Countrywide in respect of any promise, covenant, warranty, or guarantee given to it by any person relating to the liabilities of United.

6. Continuity of legal proceedings—(1) This section applies to—

5 (a) Any action, arbitration, or proceeding, or cause of action, arbitration, or proceeding which, immediately before the appointed day, is pending or existing by, against, or in favour of United or to which United is a party:

10 (b) Any cause of action, arbitration, or proceeding that arises on or after the appointed day in respect of any contract entered into by United or any act done or omitted to be done by or to United, as the case may be, before the appointed day that would, but for this Act, be available to, against, or in favour of United or to which United could have been a party.

15 (2) Any action, arbitration, or proceeding and any cause of action, arbitration, or proceeding to which this section applies shall not abate or be discontinued or be prejudicially affected by this Act, but may be prosecuted and, without amendment of any writ, pleading, or other document, continued and enforced by, against, or in favour of Countrywide in its own name to the
20 same extent that it might have been prosecuted, continued, and enforced by, against, or in favour of United if this Act had not been passed.

7. Books and documents to remain evidence—(1) Any document, matter, or thing which, if this Act had not been
25 passed, would have been admissible in evidence in respect of any matter for or against United shall, on and after the appointed day, be admissible in evidence in respect of the same matter for or against Countrywide.

30 (2) In this section, “document” has the same meaning as in section 2 (1) of the Evidence Amendment Act (No. 2) 1980.

8. Registers—(1) No Registrar of Deeds or District Land Registrar or any other person charged with the keeping of any books or registers shall be obliged solely by reason of the foregoing provisions of this Act to change the name of United
35 to that of Countrywide in those books or registers or in any document.

(2) The presentation to any Registrar or other person of any instrument (whether or not comprising an instrument of transfer) by Countrywide—

40 (a) Executed or purporting to be executed by Countrywide; and

(b) Relating to any property held immediately before the appointed day by United; and

- (c) Containing a recital that that property has become vested in Countrywide by virtue of the provisions of this Act—

shall, in the absence of evidence to the contrary, be sufficient evidence that the property is vested in Countrywide.

(3) Without limiting subsection (1) or subsection (2) of this section, where any security issued by any person or any rights or interests in property of any person are, by virtue of this Act, vested in Countrywide, that person, on presentation of a certificate signed by the Managing Director of Countrywide or by the General Manager Banking Countrywide or by an officer of Countrywide acting under delegation from the Managing Director, stating that that security or any such rights or interests have, by virtue of this Act, vested in Countrywide, shall, notwithstanding any other enactment or rule of law or the provisions of any instrument, register Countrywide as the holder of that security or as the person entitled to such rights or interests, as the case may be.

(4) In subsection (3) of this section, “security” has the same meaning as in section 2 (1) of the Securities Act 1978.

9. Taxes and duties—(1) Subject to subsections (2) and (3) of this section, for the purposes of the Inland Revenue Acts, and any other enactment that imposes or provides for the collection of a tax, duty, levy, rate, or other charge,—

(a) On and from the appointed day United and Countrywide shall be deemed to be the same person; and

(b) All transactions entered into by, and acts of, United before the appointed day shall be deemed to have been entered into by, or to be those of, Countrywide and to have been entered into or performed by Countrywide at the time when they were entered into or performed by United.

(2) For the purposes of the Income Tax Act 1976, losses that were incurred by United—

(a) In United’s non-standard accounting year ended on the 31st day of December 1992 (to the extent attributable, in accordance with section 188 (10) of the Income Tax Act 1976, to the period after the 8th day of May 1992) shall be deemed not to have been incurred by United, but to have been incurred by Countrywide, in its non-standard accounting year ended on the 31st day of December 1992; and

(b) In United’s non-standard accounting year beginning on the 1st day of January 1993 shall be deemed not to

have been incurred by United, but to have been incurred by Countrywide, in its non-standard accounting year beginning on the 1st day of January 1993—

- 5 in each case to the extent not already set off against assessable income under section 188 or section 191 of the Income Tax Act 1976.

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- 10 (3) Any credit in United's imputation credit account as at the appointed day shall be transferred to Countrywide's imputation credit account on the appointed day and, for the purposes of section 394E (1) (g) of the Income Tax Act 1976, the credits shall be deemed to have arisen in Countrywide's imputation credit account at the same time as they were deemed to have
15 arisen in United's imputation credit account under section 394E (4) of the Income Tax Act 1976.

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- 20 (3) Any credit balance in United's imputation credit account as at the appointed day shall be transferred to Countrywide's imputation credit account on the appointed day, and for the purposes of section 394E (1) (g) of the Income Tax Act 1976, the credits making up that credit balance shall be determined by applying the principles of section 394E (4) of that Act and shall
25 be deemed to have arisen in Countrywide's imputation credit account at the same time as they were deemed to have arisen in United's imputation credit account under section 394D (2) of that Act, as modified by section 394E (4) (b) of that Act.

- 30 **10. Status of Countrywide**—(1) Nothing in this Act exempts Countrywide from the provisions of any enactment relating to banks or banking.

(2) The Reserve Bank of New Zealand shall—

- 35 (a) On the appointed day, remove the name "United Bank Limited" from the register of registered banks maintained under the Reserve Bank of New Zealand Act 1989; and
(b) As soon as practicable after removing the name, give notice of the removal of the name in the *Gazette*.

11. Application of Gaming and Lotteries Act 1977—

The Gaming and Lotteries Act 1977 shall not apply to any ballot that is conducted by Countrywide for the purpose of determining the entitlement for loans of any person who is a terminating depositor.

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12. Savings in respect of Land Transfer Act 1952—

Except as provided in section 8 of this Act, nothing in this Act derogates from the provisions of the Land Transfer Act 1952.

13. Notice to depositors—(1) Not later than 21 days after the date on which an Order in Council is made under section 1 (3) of this Act, Countrywide shall— 10

(a) Give written notice of the matters set out in subsection (2) of this section to every depositor of United; and

(b) Give public notice of the matters set out in subsection (3) of this section in a principal metropolitan daily newspaper circulating in each of Auckland, Wellington, Christchurch, and Dunedin. 15

(2) The notice given under subsection (1) (a) of this section must state—

(a) That, by virtue of this Act, the undertaking of United is to vest in Countrywide on the date (which must also be stated) specified in the Order in Council made under section 1 (3) of this Act: 20

(b) That, by virtue of this Act, all deposits with United will, on that date, become deposits with Countrywide: 25

(c) That the depositor has the right to withdraw the amount standing to the credit of his or her account as a depositor as from the date of the notice at any time before the appointed day and, except in the case of a penalty imposed by or under any Act relating to the deposit, to do so without penalty. 30

(3) The notice given under subsection (1) (b) of this section must state—

(a) That, by virtue of this Act, the undertaking of United is to vest in Countrywide on the date (which must also be stated) specified in the Order in Council made under section 1 (3) of this Act: 35

(b) That, by virtue of this Act, all deposits with United will, on that date, become deposits with Countrywide:

(c) That every person who is a depositor at the date on which notices under subsection (1) (a) of this section are sent to all depositors has the right to withdraw the amount standing to the credit of his or her account as a 40

depositor as from the date of such notices at any time before the appointed day and, except in the case of any penalty imposed by or under any other Act relating to the deposit, to do so without penalty.

5 (4) Every notice to a depositor under **subsection (1) (a)** of this section shall be sent to the depositor's last known address.

(5) A failure to comply with this section does not affect the validity of an Order in Council made under **section 1 (3)** of this Act.

10 **14. Repayment of deposits**—United shall, on receipt of a request in writing from a depositor, being a person who was a depositor as at the date on which notices under **section 13 (1) (a)** of this Act were sent to all depositors, repay the amount standing to the credit of the account of the depositor together
15 with any interest accrued due, and, except in the case of a penalty imposed by or under any other Act relating to the deposit, shall do so without penalty.

15. Private Act—This Act is hereby declared to be a private Act.